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10/633,262	07/31/2003	Thomas Glen Harmer	0233-0001	3387
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BEEM PATENT LAW FIRM 53 W. JACKSON BLVD., SUITE 1352 CHICAGO, IL 60604-3787			WALTERS, JOHN DANIEL	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/633,262
Filing Date: July 31, 2003
Appellant(s): HARMER ET AL.

Roger J. French
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7 April 2006 appealing from the Office action mailed 14 November 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,103,369	Gaines et al.	9-1963
4,033,598	King	7-1977
6,095,536	Stein et al.	8-2000
WO 93/19969	Walsh	10-1993

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Gaines, et al. (3,103,369). Gaines discloses a wheel assembly comprising:

- a wheel having two sides, a set of tubular spokes, and a rim (Fig. 1);
- a pair of substantially planar covers (Fig. 2, items 15 and 16);
- wherein said covers substantially cover said tubular spokes (Fig. 1);

- wherein said covers are mounted to said wheel, via fasteners (Fig. 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over King (4,033,598). King discloses a sulky comprising:

- a generally tubular arch having two ends (Fig. 5, items 20, 21, and 22);
- a seat mounted to said arch (Fig. 1, item 30);
- a pair of strut assemblies depending downwardly from opposite ends of said arch (Fig. 5, items 18 and 19);
- wherein said strut assemblies receive a wheel (Fig. 5, items 14 and 16);
- a pair of rails mounted on said arch (Fig. 1, items 36 and 38).

King fails to explicitly state that the arch and said strut assemblies are positioned for substantially longitudinal alignment of said wheels before welding. King notes (column 3, lines 31 – 33) that said arch and said strut assemblies are welded to each other. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to align the wheels of the sulky before welding the arch to the struts of King. Should such an operation not be preformed during the manufacturing

process, the sulky would not run true, and thereby be made unsuitable for its intended purpose.

Claims 5, 6, and 14 – 17, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Stein et al. (6,095,536) in view of WO 93/19969. Stein discloses a sulky comprising:

- a pair of laterally spaced wheels (Fig 1, item 52) mounted generally at opposite ends of a tubular arch (Fig. 1, item 36);
- a seat mounted to said arch between said wheels (Fig. 1, item 42);
- a first rail and a second rail extending from each side of said arch (Fig 2);
- wherein a portion of said first and said second rails, proximate to said arch, angle towards a center line (Fig. 2, item 28);
- wherein said angle is about 15° (Fig. 2);
- wherein each of said rails includes a second portion extending forwardly from said angled portion which is generally parallel to a wheel center line (Fig. 2, item 30) and a second angled portion extending forward from said second portion which is angled towards said center line (Fig. 2, item 32);
- wherein a stirrup is located on each said second portions behind each said second angled portions (Fig. 2, item 35);
- a generally longitudinal harnessing portion (Fig. 1, item 16).

Stein fails to teach that a wheel center line and a horse center line are to be offset from one another. WO 93/19969, however, discloses a sulky comprising:

- a wheel center line offset from a horse center line (Fig. 2).

In regards to claim 6, figure 2 of Stein shows the angle formed by the first angled portion and the second portion. Geometry would indicate that the first angled portion is 10° from perpendicular to the tubular arch.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine the offset center lines of WO 93/19969 with the sulky of Stein in order to allow said sulky to be made shorter, thereby improving speed, while allowing the horse to not contact the "outboard" wheel when rounding a turn on a race track (WO 93/19969 - page 5, line 25 to page 6 line 2).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gaines et al. (3,103,369) and further in view of Stein et al. (6,095,536). Gaines discloses a wheel assembly comprising:

- a wheel having two sides, a set of tubular spokes, and a rim (Fig. 1);
- a pair of substantially planar covers (Fig. 2, items 15 and 16);
- wherein said covers substantially cover said tubular spokes (Fig. 1);
- wherein said covers are mounted to said wheel, via other components (Fig. 2).

Gaines fails to disclose the structure of the sulky beyond the "wheel area". Stein, however, discloses a sulky comprising:

- a pair of laterally spaced wheels (Fig 1, item 52) mounted generally at opposite ends of a tubular arch (Fig. 1, item 36);
- a seat mounted to said arch between said wheels (Fig. 1, item 42);

- a first rail and a second rail extending from each side of said arch (Fig 2);
- wherein a portion of said second rail proximate to said arch angles towards a center line (Fig. 2, item 28).

As Gaines does not disclose a sulky structure beyond the "wheel area" it is necessary that a sulky structure be added, therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine the wheel assembly structure of Gaines with the sulky structure of Stein in order to create a vehicle with all necessary components for operation.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gaines et al. (3,103,369). Gaines discloses a wheel assembly as described above. Gaines does not disclose the use of hook and loop fasteners. He does, however, cite the use of "fasteners". It is common knowledge that hook and loop fasteners can be used in place of other fasteners such as buttons, zippers, snaps. Therefore, It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to affix the covers of Gaines to said wheels with hook and loop fasteners.

(10) Response to Argument

Applicant's arguments filed 11 April 2006 have been fully considered but they are not persuasive in regards to the rejections under 35 U.S.C. § 102 to claims 10 and 11, and to the rejections under 35 U.S.C. § 103 to claims 2, 5, 6, 9, and 12.

In regards to claims 10 and 11, Applicant states that Gaines does not disclose a pair of wheel covers, which are mounted to the wheel. Figure 2 of Gaines shows two substantially plainer wheel covers (items 15 and 16), which are attached to the outer races of the wheel bearings. Said wheel bearings are part of the wheel and, as such, said wheel covers are attached to the wheel. Claim 10 states that the wheel covers “substantially” cover the spokes, i.e. cover to a great or significant extent. Figure 1 of Gaines shows the spokes being covered to a significant extent by said covers. Claim 11 recites the limitation of the use of fasteners to attach said covers. Figure 2 of Gaines shows fasteners 20 and 21 attaching said cover to said wheel/wheel bearings.

In regards to claim 2, Applicant states that “No other reference (or other basis, other than the Examiner’s opinion) is cited to supply this teaching...” of longitudinal alignment of struts before welding. As stated in the previous rejection, it would be obvious that said alignment would take place before welding to allow for true running of said sulky.

In regards to claims 5 and 6, Applicant states that “...neither reference...teaches or suggests and offset racing sulky...references cannot properly be combined in the absence of a clear teaching...the suggestion comes only from Applicant’s disclosure...”. As stated in the previous rejection, WO 93/19969 teaches that it is advantageous for a variety of reasons to manufacture a sulky rail which angles inward causing an offset center line (page 5, line 25 to page 6 line 2).

While the Office appreciates the information provided by Applicant in the Rule 132 Declaration, it does not overcome the rejection based on the prior art. The points made within said declaration are allegation and opinion. No hard data, i.e. fact, is included relating to sales of Applicant's invention vs. competitive sulkies, studies of improvement timewise of a horse using Applicants invention over a current sulky, number of races run vs. number of races won by Applicant's invention, or other non-subjective measures, tests, or data. Additionally, said allegations and opinions are supplied by Applicant, who is referred to as "the head of Evolution Racing", i.e. the Assignee, within the NPL documents supplied 12 December 2005, first paragraph on page 95 of 290. This would indicate a vested interested on the part of the Applicant in the financial stakes of the Assignee.

Claim 6 states that a rail portion is angled at about 15°. Looking at figure 2 of Stein, the rail portion is angled at 10°, based on a geometric analysis. The qualifier of "about" in the claim allows for prior art of angles above and below 15° to be used.

In regards to claims 14 – 17, which depend from claim 5, see the reply to claims 5 and 6 above. Applicant does not dispute that the limitations of claims 14 – 17 are shown within the prior art.

In regards to claim 9, which incorporates the limitations of claim 10, see the reply to claims 10 and 11 above.

In regards to claim 12, Applicant did not traverse Examiner's statement of Official Notice of the interchangeability of hook and loop fasteners with other types of fastener, and as such it is now considered Common Knowledge. Applicant states that the teachings fail to disclose that "...in the sulky racing environment...time between races is short...it is beneficial to have equipment that is easily and quickly disassembled." This statement relates to the intended use of said structure and not to any distinguishing physical differences. In addition, claim 12 contains no language addressing the removability of said covers or the speed with which said covers could be removed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer. Applicant does not include this heading which is taken to indicate Applicant's assent that there are no current Related Appeals or Interferences.

(12) Evidence Appendix

Applicant does not include the "Evidence Appendix" which should include the Rule 132 Declaration of Thomas G. Harmer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

John Walters

A handwritten signature in black ink, appearing to be 'JW' or similar, located below the typed name 'John Walters'.

Conferees:

Lesley Morris *Lm*

Hau Phan *HP*

A handwritten signature in black ink, consisting of a stylized 'C' followed by a series of diagonal strokes.

CHRISTOPHER P. ELLIS
SUPERVISORY PATENT EXAMINER
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